

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Elena COSTA et al.

Serial No. 10/532,346

Group Art Unit: 2617

Confirmation No. 3925

Filed: April 22, 2005

Examiner: Jaime Michele Holliday

For: METHOD FOR RADIO SYSTEM RESOURCE MANAGEMENT

RESPONSE TO

THE NOTICE OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Notice of Non-Compliant Appeal Brief mailed December 14, 2009, in the above-identified application. The Notice indicates that the Appeal Brief filed on November 23, 2009 is non-compliant because the grounds of rejection to be reviewed on appeal do not indicate **all grounds as identified in the Examiner's final rejection office action**, and corresponding arguments are not provided.

However, the above-emphasized statement is an erroneous interpretation of the provisions of 37 C.F.R. 41.37(c)(1)(vi). This cited patent rule requires appellants to include in the Appeal Brief "A concise statement of **each ground of rejection presented for review.**" If a ground of rejection present in the Examiner's final rejection office action is not appealed, Appellants have no obligation to include it in the appeal brief and to present arguments related to it.

In this case the only ground of rejection appealed is the rejection of claims 15, 16, 18-20 and 26-28 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,052,593 to Guimont et al. in view of U.S. Publication No. 2004/001429 A1 to Ma et al. Appellants do not appeal the rejections of the other (dependent) claims that were set forth by the Examiner in the

final Office Action. Therefore, Appellants have no obligation to list or present arguments for rejections which are not appealed.

On December 17, 2009, the undersigned called SPE Appiah Charles coordinator in art unit 2617 to present the above-arguments. Examiner Appiah agreed that the non-compliant appeal brief notice is in error.

Applicants filed a Communication on December 18, 2009 respectfully requesting the non-compliant appeal brief notice be withdrawn.

Since not Notice of Withdrawal was received, the undersigned called Examiner Holliday on January 12, 2010. The Examiner has confirmed that the patent application with the appeal brief is currently in her docket which amounts to a constructive withdrawal of the Notice of Non-Compliant Appeal Brief. The Examiner kindly faxed to the undersigned an interview summary confirming this situation.

However, out of an abundance of precaution, in order not to pass the due date for response to the Notice of Non-Compliant Amendment, the undersigned files electronically this response.

Respectfully submitted,

STAAS & HALSEY LLP

Date: January 14, 2010

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By: _____
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